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FIRST GENERAL COUNSEL'S REPORT

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SENSITIVE

MUR: 6206

DATE RECEIVED: July 10, 2009

DATE ACTIVATED: September 29, 2009

EXPIRATION OF SOL: July 10, 2012

COMPLAINANT: United Steelworkers

RESPONDENTS: BASF Corporation
BASF Corporation Employees PAC

RELEVANT STATUTES: 2 U.S.C. § 441b(b)(6)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

1 **I. INTRODUCTION**

2 United Steelworkers ("USW") alleges that BASF Corporation ("BASF" or
3 "Respondent") violated the Federal Election Campaign Act of 1971, as amended, ("the
4 Act") by failing to make available a payroll deduction program for contributions to the
5 USW Political Action Fund for workers at a BASF facility in Geismar, Louisiana. *See*
6 Complaint (alleging violations of 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k)).
7 BASF acknowledges it has an obligation under the Act to provide a payroll deduction
8 program and states that it provided cost estimates for the program three days before USW
9 filed the Complaint and again in August 2009. *See* Response at 2.

10 The Commission should dismiss the Complaint because the available information
11 indicates that Respondent acknowledges its obligation to provide the payroll deduction

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1 program and has begun to implement the system. There is no need for any action by the
2 Commission.

3 **II. FACTS**

4 USW is a labor organization that represents production and maintenance
5 employees at the BASF facility in Geismar, Louisiana. USW seeks to establish a payroll
6 deduction program for the USW Political Action Fund, the union's separate segregated
7 fund ("SSF"). BASF already uses payroll deductions to collect contributions from
8 executive and administrative personnel to the BASF Corporation Employees Political
9 Action Committee. Complaint at 1.

10 In the latter half of 2007, during collective bargaining negotiations, USW made a
11 written request for BASF to implement the payroll deduction program for contributions
12 to its SSF. *Id.* Neither the Complaint nor the Response indicates what transpired
13 between the date of the request in 2007 and June 2009, when BASF acknowledged it was
14 obligated to provide the payroll deduction program. *See id.*, Exhibit B (Letter from
15 William H. Schmelling, Associate General Counsel, United Steelworkers, to E.J.
16 Billedeaux, Director, Labor Relations, BASF Group dated June 9, 2009, memorializing a
17 telephone conversation between USW and BASF in early June 2009). BASF indicated,
18 however, that for at least a portion of this time, it was waiting for its third party payroll
19 administrator to provide a cost estimate so that USW could reimburse it for the expenses
20 of a payroll deduction program. *Id.*

21 On June 29, 2009, BASF received the cost estimate and forwarded it to a union
22 representative in the same office. Response at 2. USW filed the complaint three days
23 later on July 2, 2009. In a letter dated August 26, 2009, BASF provided a new cost

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1 estimate after learning the initial fee would be higher. *See* Letter from E.J. Billedeaux,
2 Employee Relations Manager, BASF Corporation, to Dexter Guidry, Chairperson, USW
3 Local 620 dated Aug. 26, 2009, attached to Response.

4 **III. ANALYSIS**

5 The Act and the Commission's implementing regulations provide that "any
6 corporation, including its subsidiaries, branches, divisions, and affiliates" that uses a
7 lawful method of soliciting voluntary contributions from stockholders, executives or
8 administrative personnel, and their families, must, upon request, make that method
9 available to a labor organization representing the company's employees at a cost
10 sufficient only to reimburse the corporation for expenses incurred thereby. *See* 2 U.S.C.
11 § 441b(b)(6); *see also* 11 C.F.R. § 114.5(k). The Commission has addressed this Section
12 of the Act in a very limited number of advisory opinions and MURs that track the
13 statutory language and do not offer further guidance in this matter.¹

14 As noted above, USW acknowledges that it must reimburse BASF. *See* Letter
15 from Schmelling to Billedeaux (stating "It is understood that . . . the USW should
16 reimburse BASF for its costs incurred in providing such payroll deduction program to the
17 USW and its [Political Action Fund]."). There are unanswered questions regarding the
18 reasons for the delay in addressing USW's request for a cost estimate. BASF, however,

¹ The Commission has issued advisory opinions that address a corporation's obligation under 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k). In Advisory Opinion 1979-21 (Communication Workers of America), the issue was whether the union was obligated to reimburse the corporation for the costs of maintaining a payroll deduction system. Advisory Opinion 1979-21 at 2. Similarly, in Advisory Opinion 1981-39 (Square D), the issue focused on whether the union could arrange for advance reimbursement of the corporation for its administration costs. Advisory Opinion 1981-39 at 1. In MUR 5932 (Freightliner LLC), the Commission addressed whether the respondent, a subsidiary that did not operate a PAC, was obligated to provide bargaining unit employees with a payroll deduction system because it was affiliated with another wholly-owned subsidiary that did operate an SSF and had a solicitation method in place. MUR 5932 Factual and Legal Analysis at 8-9 (Commission dismissed the complaint and admonished the respondent for refusing to provide a payroll deduction program during the period it had been affiliated with the subsidiary that had a solicitation method).

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1 has already provided the relief USW seeks. While an unreasonable delay could constitute
2 a constructive refusal, the action taken by BASF makes it unnecessary to address this
3 issue.


4 Indeed, on June 29, 2009, BASF provided the payroll deduction cost estimate to
5 USW. Response at 2. BASF later updated the cost information in an August 26, 2009,
6 letter. *Id.* While we recognize that the passage of over eighteen months from the time
7 USW initially requested the solicitation method in 2007 until BASF forwarded the cost
8 estimates on June 29, 2009, could be construed as a constructive refusal, we lack facts
9 that would explain the cause of the delay. BASF has remedied the alleged violation and
10 an investigation would not be an efficient use of Commission resources. We therefore
11 recommend the Commission exercise its prosecutorial discretion and dismiss the
12 Complaint. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the matter.
15 2. Approved the attached Factual and Legal Analysis.
16 3. Approve the appropriate letters.
17 4. Close the file.

18 Thomasenia P. Duncan
19 General Counsel

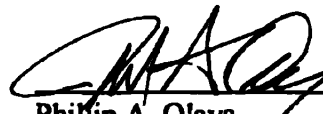
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23 Date

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25 Stephen Gura
26 Deputy Associate General Counsel
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